

FREEDOM COURT REPORTING

Page 1

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF TEXAS
3 MARSHALL DIVISION
Case No. 2:08-cv-422 TJW

4
5 DEPOSITION OF ERIC EMDE

May 4, 2010

6
7 PATTY BEALL, MATTHEW MAXWELL, TALINA McELHANY and
KELLY HAMPTON, individually and on behalf of all
8 others similarly situated,

9 Plaintiffs,

10 vs.

11 TYLER TECHNOLOGIES, INC. and EDP ENTERPRISES,
12 INC.,
Defendants.

13
14 APPEARANCES:

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17 Appearing on behalf of Plaintiffs.

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21 Appearing on behalf of Defendants.

22 Also Present: H. Lynn Moore, Jr.
23
24
25

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1 Pursuant to Notice and the Federal Rules
 2 of Civil Procedure, the deposition of ERIC EMDE,
 3 called by Defendants, was taken on Tuesday, May 4,
 4 2010, commencing at 9:52 a.m., at 216 16th Street,
 5 Suite 650, Denver, Colorado, before Gail
 6 Obermeyer, Registered Professional Reporter and
 7 Notary Public within and for the State of
 8 Colorado.

9

10 I N D E X

11 DEPOSITION OF ERIC EMDE

12 EXAMINATION BY: PAGE

13 Ms. Holmes 115

14 Mr. McKeeby 4, 120

15

16 EXHIBITS INITIAL REFERENCE

17 Exhibit 1 Time Report pertaining 20
 to Emde, 1/10/10 to
 18 1/16/10, with
 attachments

19

Exhibit 2 Resume of Eric A. Emde 28

20

Exhibit 3 Letter to Emde from 49
 Boen, 2/20/07

21

22 Exhibit 4 Time Report pertaining 69
 to Emde, 6/4/07 to
 23 6/10/07, with
 attachments

24

25

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8	to Emde, 1/14/09 to	
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12	to Emde, 9/28/09 to	
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15	Exhibit 8 Bonus Calculation,	75
16	12/27/09 to 4/16/10,	
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18	Exhibit 9 Consent to Opt In	112
19	pertaining to Eric	
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1 A Well, it says who the customer is, who
2 has had taskings at that site, the dates that I'm
3 supposed to be there, and whether it's a business
4 license, or a Building Projects program, or call
5 center, or something else.

6 Q Is there any, beyond what you provided
7 so far, any description in this tasking document
8 as to the types of services you're to perform on
9 the trip?

10 A There might be other documents, but
11 that's the primary one.

12 Q Well, but does the tasking document
13 tell you what services you are to perform?

14 A It will say something, like, BP Live;
15 meaning, Building Projects and take it to live,
16 make sure that it's turned on and they're using it
17 when I leave.

18 Q That would be typical?

19 A Yes.

20 Q Because the work of implementation
21 contemplates services in anticipation of the
22 customer going live with Tyler software, which it
23 has purchased?

24 A My portion of it would be on there,
25 yes; but there would be other portions assigned to

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1 other people.

2 Q Other portions of what?

3 A Of the tasking for possibly Building
4 Projects.

5 Q What do you mean by "Building
6 Projects"?

7 A That's the type of software. Somebody
8 would go in ahead of time and do a lot of
9 background work; setting up formulas,
10 calculations, that sort of thing. If it was a
11 conversion, a conversion programmer would have
12 been writing conversion routines from old versions
13 or other software into our software.

14 Q Okay. But --

15 A Somebody gives the tasking to me to
16 provide the training.

17 Q Do you do any of the conversion
18 programming?

19 A No.

20 Q Do you do any type of conversion work
21 at all?

22 A The only type of conversion work that I
23 would do at all would be working with the customer
24 to look at the data that the programmer converted
25 to see if it was accurate and in the right places.

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1 But I was more the middleman.

2 Q So with an implementation, some
3 tasking, to use your term, has already been done
4 before you get the -- before you're on the site?

5 A Yes.

6 Q And that would have been done by the
7 conversion programmer?

8 A Or the project manager or the -- or
9 maybe even some of the other people that were
10 involved on other parts of the program.

11 Q And the people who do the background
12 work that you mentioned and the formulas and
13 calculations, would that have been conversion
14 programs or some other group of employees?

15 A I think that -- conversion programmers
16 are only involved when there's data from another
17 piece of software that's being converted into the
18 INCODE software. The tasking might say that this
19 is conversion, just realizing that there's more to
20 look at. But that does not mean that I would, in
21 fact, be the conversion person.

22 The person that does the setup,
23 preliminary setup, there would be several
24 different people involved. One could be setting
25 up forms, another person could be working with the

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1 people that do -- for example, on calculations for
2 electrical permits, how do they -- somebody would
3 call, work with the building people and say, "How
4 do you calculate these things? What are the
5 scales that you would use?" They would write the
6 formulas for that.

7 Q And all that would be done before you
8 get to the site?

9 A Generally, yes.

10 Q Are you familiar with a term
11 "configuration"?

12 A Configuration, in a general sense, yes.

13 Q Is that a term that's used at Tyler
14 with respect -- well, period?

15 A Yes, but it has a lot of different
16 meanings.

17 Q The meaning that I attached to
18 configuration relates to taking data from the
19 customer's previous system and setting it up or
20 configuring it into Tyler software. Do you -- is
21 that a definition, if you will, of configuration
22 that you're familiar with at Tyler?

23 A I'm familiar with the definition, but I
24 would call that conversion.

25 Q And is conversion a subset of

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1 configuration or something different?

2 A It's the -- it's actually something
3 different.

4 Q Does any of the work that you do as an
5 implementation specialist involve conversion, or
6 is that work done by a conversion programmer?

7 A Again, the conversion programmer would
8 get the data from the site, originally, look at it
9 and try to match it up with what INCODE does. And
10 when I was on site, my job would be to make sure
11 that what the conversion programmer changed or
12 brought into the program was what the customer
13 wanted -- how they wanted to see it or that was --
14 things were matching up, that they weren't apples
15 and oranges; so the apples fell into the apples
16 pile, and the oranges fell into the oranges pile.

17 But I would just say, "Hey, look at
18 this. This is what's being brought over. Is that
19 right?" I didn't have anything to do with
20 converting it, other than telling maybe the
21 programmer, "This one goes in that pile instead,
22 and we don't need this one, based on what the
23 customer said."

24 Q That would be the extent of the work
25 that you would do that you would describe as

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1 conversion?

2 A Yes.

3 Q And using not my definition of

4 configuration, but a definition -- and I

5 understand you testified that it's a broad term.

6 So if you can answer the question, fine. Is there

7 any work that you do that you would describe as

8 configuration?

9 MS. HOLMES: Object to the form.

10 A Maybe a very small piece of it.

11 Q (BY MR. McKEEBY) What piece do you

12 mean?

13 A I couldn't put a percentage on it, but

14 it would be adjusting a form so it pulls in the

15 right kind of -- maybe changing a field from

16 something that was listed as property to something

17 that belongs in a permit field. And it would be a

18 matter of working with a Microsoft Word template

19 to change the code. The code -- and this is not

20 like coding in software. It's only coding, for

21 example, changing the term from BP to PP, with

22 whatever the attachment was.

23 Q And that's -- what definition of

24 configuration are you using when you describe that

25 functionality -- or that function, rather?

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1 A How about tweaking? Just minor
2 adjustments. Maybe a form needs to have an extra
3 space in it. I could go do that.

4 Q Otherwise, it would approach
5 programming, which you don't do?

6 A Oh, yeah, definitely. Even a lot of
7 that other part, that's why we have specialists
8 that do nothing but Word templates, for example,
9 or forms templates.

10 Q Let me -- I got a little off track,
11 whether you know it or not. But let me get back
12 to you getting a task document -- tasking document
13 from Ms. -- is it Lynn?

14 A Phyllis Lynn, yes.

15 Q Let's -- I want to use an example. And
16 I know that implementations can be different, but
17 is there -- I've got this Copperas Cove time
18 report in front of me, which is fairly recent.
19 It's in the beginning of 2009. I think that's the
20 first of the --

21 A Yes.

22 Q Do you have that one? And I'm not sure
23 the document is going to help you, but it might.
24 So go ahead and keep it in front of you, if you
25 like. But my question relates to, it looks like

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1 utility that -- the trainers actually help some of
2 the software developers develop over time, which
3 is a -- it's called a TD manager. What that
4 actually does is takes a copy of the full INCODE
5 database and makes a mirror image of it on the
6 server that can be used for training. It only
7 reads one direction. It reads from the live data
8 into test and training.

9 The purpose of that is so a student can
10 get in there and just play, and make payments, and
11 calculations, and it will never hit the books. It
12 will never affect the live software. That can
13 take -- if it's a small database that is not an
14 SQL database, it can take 15 minutes. If it's a
15 large database, it could take a couple hours.

16 Q What are you doing -- let's say an
17 example of it taking a couple hours. What
18 functions are you doing to assist in setting up
19 the full INCODE database?

20 A Load the utility, hit run.

21 Q And it just -- and then wait?

22 A And then if it works, wonderful; if it
23 doesn't, find out why not and do it again.

24 Q And you need to have this done prior to
25 doing any training?

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1 A No, not necessarily. But it's one of
2 the baseline things I would normally do.

3 Q Okay. So you get to the -- let's maybe
4 back up a little bit. It's Monday morning at
5 Copperas Cove, Texas. How do you know -- have you
6 set up what time you're supposed to be at the
7 site?

8 A Yes.

9 Q That would have been in the
10 conversation that you mentioned previously?

11 A Yes.

12 Q Would there be a typical time that you
13 would generally have to be there or need to be
14 there?

15 A I would be there usually when they
16 opened their doors.

17 Q Which would be when?

18 A In Copperas Cove, I think it was 8:00.

19 Q And I take it you would then meet with
20 the person that you would talk to?

21 A Right.

22 Q And then what would you do after this
23 meeting? Would you then do the setup?

24 A Well, get access to the server, do the
25 setup, figure out where I'm going to be working.

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1 In the case of Copperas Cove, it was inside of a
2 little server closet. But then there would also
3 be --

4 Q You mean physically where you'd be
5 working?

6 A Yeah. Best one was a bathroom, but
7 that's another story. Also, where I would be
8 working with people when I was actually training.
9 In that case, they had a City Council chambers, so
10 I would have to set up one of their laptops,
11 projector, that sort of thing.

12 Q Would there be discussion during this
13 initial meeting as to when training would
14 commence?

15 A Yes.

16 Q And the -- I take it the customer would
17 explain its preferences as to --

18 A Yeah, who they wanted to have trained
19 and in what quantities, I guess, depending on
20 function. There are some generic things on the
21 CRM, or the customer relationship management
22 software, which is the packages that I was
23 training that are common. So you could have a
24 larger group orientation and break into hands-on.
25 But who was going to be there just depended on

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1 schedules for a lot of different things.

2 Q Is there a title that the person with
3 whom you had this initial meeting typically held?

4 A No.

5 Q Varied from county to county?

6 A City to city, primarily. It could be a
7 community development director. It could be the
8 IT manager. It could be the city clerk. It just
9 depends on the city, and the size, and how they're
10 laid out.

11 Q And I guess I also would take it that
12 the length of this initial consultation meeting
13 would vary depending on the variety of factors?

14 A Yes.

15 Q So, again, it would be typical that
16 during this initial consultation meaning you would
17 try to -- you would identify who needed to be
18 trained and on what?

19 A Yes.

20 MS. HOLMES: Object to the form.

21 Q (BY MR. McKEEBY) And that would be
22 based on the input the customer would tell you?

23 A The customer -- I wouldn't identify it.
24 They would tell me who they wanted trained and how
25 much they needed to know.

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1 Q Right. And from that, you would work
2 with this person as to a schedule?

3 A An outline of a schedule, not a hard
4 schedule; only because so many things are
5 variable.

6 Q But the customer would tell you
7 something along the lines of, you know, "These
8 particular employees need to be trained on these
9 particular functions"?

10 A Yes.

11 Q And then you would determine how
12 long -- or you would determine the type of
13 training that would be necessary to meet that
14 customer's preferences with respect to what these
15 particular employees would need to know about
16 those particular functions?

17 MS. HOLMES: Object to the form.

18 A Better restate that, because I'm not
19 sure I understand the question.

20 Q (BY MR. McKEEBY) Sure. I'm trying to
21 get to, ultimately, how the training is scheduled.
22 Because I take it employees at this customer
23 location need to know when to be in the -- I guess
24 they weren't going to the server closet, but they
25 were going to -- what was the --

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1 necessarily scheduled. "Okay. You're going to be
2 trained from 2:00 to 3:00 or 2:00 to 3:30," or
3 anything like that. That's not how that works?

4 A No.

5 Q So there's not a schedule set up like
6 that?

7 A No. We might have a start time of,
8 say, 1 o'clock, and we could work for an hour and
9 a half, then somebody has to leave; or other times
10 it would be someone would say, "Well, can you
11 explain some more here or show me how this does?"
12 It always seems like there's some side discussions
13 about how the product is going to help them and
14 their process as integrated into the software.

15 Q So you would -- I guess you would agree
16 with me that the training would be interactive?

17 A Oh, absolutely interactive, yes.

18 Q Because they would ask you questions
19 about particular functions?

20 A Or I would see they needed more
21 explanations about certain things, yes.

22 Q And how would you see that; because
23 they weren't grasping it?

24 A By their questions, or lack thereof, or
25 their facial expressions, or --

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1 Q Right, right. And would this be
2 classroom-style training, typically, if I can use
3 that term?

4 A Not really, no. Very few -- very few
5 times would I stand up and lecture.

6 Q Would the people that were in the
7 training have laptops in front of them?

8 A Generally not -- well, no, they would
9 not, generally.

10 Q Would you have -- would you be
11 presenting a PowerPoint to them?

12 A Sometimes.

13 Q Depending on what?

14 A Where the audience started from, or how
15 much they know about things. Sometimes it would
16 be -- I'd probably say 10 percent of the time
17 where they even use a PowerPoint at all.

18 Q In those other 90, roughly -- I know
19 you're giving approximations -- roughly 90 percent
20 of times, what would you -- would you have
21 anything that you would use as training, or would
22 you just kind of talk them through?

23 A Well, no. It would be a projection
24 with the application of their data, and that's why
25 the training database was tested. Training base

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1 is so critical so they can see their stuff, and
2 they can say, "Look up so and so."

3 Q So the projection would be of screen
4 shots?

5 A No, live -- or test data. It could be
6 live data in some cases.

7 Q Would you have a laptop at the training
8 where you would be manipulating the data to show
9 them -- making entries to show them how the
10 software worked?

11 A If I had -- well, depending on exactly
12 what was going on; but that could work that way,
13 yes.

14 Q Were there ever occasions where you
15 would have one-on-one training with particular
16 subsets of employees?

17 A Yes.

18 Q And would those, typically, be
19 employees who needed a greater level of -- or more
20 broad level of understanding of the software?

21 A It just depended. In some cases, it
22 would be somebody that needed more practice, more
23 explanations. In other cases, it was people that
24 I would sense would need -- would benefit by
25 having more in-depth understanding of how things

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1 are set up, so they could maintain the software
2 better and have a better understanding how it's
3 going to -- make it work for them.

4 Q And in those instances, would you have
5 to go to the project manager at Tyler or someone
6 internal with the customer and say, "Hey, I need
7 to spend some additional time with employee X,
8 because I think that employee X needs additional
9 training on a particular topic"?

10 A No.

11 Q You would just do it?

12 A I would just do it. Usually work with
13 whoever the senior person was to let them know; or
14 then would even let me know sometimes that, "This
15 person only needs this much," or "This is a person
16 that is really good in this area, but they have
17 never used computers before."

18 Q When you say "a senior person," are you
19 referring to someone with the company -- or the
20 customer, rather?

21 A With the customer, not the company.

22 Q And when you're doing this training --
23 like I'll take Copperas Cove, Texas as an example
24 again, but we can deviate as necessary -- is there
25 anyone else with you from Tyler that's doing the

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1 Q And so during that period of time when
2 you didn't have the acknowledgment document, did
3 you have any reporting functions in the sense of
4 telling your supervisors on a daily, weekly, or
5 other basis, "Here's what I did. Here's how it
6 went," or anything along those lines?

7 A Quite often there would be a trip
8 report talking about the overall what happened,
9 what went well, what was open, what problems are
10 left.

11 Q When you use the term "trip report,"
12 are you referring to a written document?

13 A Yes.

14 Q And in that document, I take it you
15 would just summarize the training that you
16 provided during the trip?

17 A That's correct.

18 Q Is that something that you had to fill
19 out on every case, or would someone tell you to do
20 that, or did you do something else?

21 A It was just something -- I think we
22 were supposed to, especially if there were any
23 problems. But usually I would put some comments
24 down so the account manager and the project
25 manager would both know what's going on, as well

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1 as those people.

2 Q Would you be at the customer facility
3 when the customer went live to Tyler's software?
4 Would that be typical?

5 A Yes, it would.

6 Q And let's make sure we have the same
7 understanding of what going live means. That
8 means when the customer, for the first time, is
9 actually using the Tyler software to perform
10 functions to transmit information and is no longer
11 using its old software system?

12 A Enter recordable data. How is that?

13 Q To enter recordable data?

14 A Yes. That would be going live. And
15 they would say, "Joe Smith is a new person. This
16 is how we put him in, and they are now in the
17 system for real."

18 Q And entering recordable data in Tyler's
19 systems?

20 A Yes.

21 Q And you say you would, typically, be
22 there during that process?

23 A To answer questions, yes.

24 Q How long would that -- would you be
25 there during the go-live process?

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1 A Well, it would depend on the software;
2 but, typically, the last day is all live, just to
3 make sure that I can stand back, listen to their
4 questions, listen to their concerns, encourage
5 them through it to stop and think and listen;
6 and make sure that they have the confidence that
7 when I leave, they're using the software and
8 they're comfortable doing so.

9 Q And in terms of how you enter that time
10 on these time reports, would you classify that as
11 training as well?

12 A Oh, absolutely.

13 Q But that's how you would report your
14 time on your time reports? Because I didn't see
15 anything in the examples that you provided me that
16 distinguished, you know, this kind of go-live
17 support that you provided, if you will, from the
18 actual training that you just described a moment
19 ago. And I take it the reason for that is because
20 you would designate that go-live support in the
21 sense that you've answering questions as part of
22 the training?

23 A Yes. The narrative would say if it was
24 live or not; in addition to, the acknowledgment
25 document now has a specific block for the go-live

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1 date.

2 Q But the time reports would just say
3 training?

4 A Yes.

5 Q That we've been going through today?

6 A Yes.

7 Q They would just say training?

8 A That's correct.

9 MS. HOLMES: Object to the form.

10 A Training as in --

11 MR. McKEEBY: She's actually mad
12 because I asked you the same question. But I
13 wasn't sure that I asked you right. But I think
14 we've got it. I'll move on.

15 A Let me ask and make sure that I
16 understand it this way.

17 Q (BY MR. McKEEBY) Okay.

18 A The first time you were the lead, if
19 there was somebody sitting there kind of being
20 with you to show you what was going on, would that
21 be considered training?

22 Q I would consider that training, yes.

23 A Okay.

24 Q It's not only training; but, yeah.

25 A It's mentoring, it's training, it's a

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1 A That's correct, nor would it include
2 things like developing trip requests on the
3 weekends for other trips that are coming up, or
4 developing a trip request because of a task and
5 short notice tasking that I would do during the
6 week.

7 Q (BY MS. HOLMES) Do any of these time
8 reports include the time you actually had to spend
9 doing the time reports?

10 A No, not really.

11 Q How much time would it take you to
12 actually fill them out and do the time reports,
13 approximately?

14 A It just depended on the situation.
15 Because there would be the time report, there
16 would also be maybe a paragraph added into a part
17 of the trip report that I keep developing over the
18 week; just notes, that sort of thing. How much
19 time? I don't know; maybe -- it would just
20 depend. It could vary quite a bit.

21 Q You can give an average, if there's an
22 estimate.

23 A 45 minutes to an hour, in the evenings.

24 Q Okay. The records that you provided
25 that are called "Time Reports," do they include

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1 any of the time that you didn't go out on site?

2 A Some of them do.

3 Q Some do, okay. But some do not?

4 A Yes.

5 Q So there would be additional time that
6 would not be recorded on here if it didn't reflect
7 time that you actually went out -- or did not go
8 out, excuse me?

9 A If I was working with a customer, but
10 not on site, yes, they would not necessarily be in
11 here.

12 Q Can you estimate an approximate amount
13 of hours that you believe you worked in excess of
14 40 hours a week? In other words, can you give us
15 an estimation of how many hours per -- an average
16 of how many hours per week you believe you worked
17 in excess of 40 hours?

18 A I'm not sure. If I were to average
19 everything mentally, not by having looked at any
20 series of numbers, counting travel, probably eight
21 to ten hours a week. I'm just guessing.

22 Q I understand. It's an estimate based
23 upon what you were thinking.

24 A Yeah.

25 Q Now --

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1 A I'll give you an acronym for it later.

2 Q You testified, I guess, for Paulo,
3 about your previous job at Environmental Support
4 Solutions. Do you recall that?

5 A Yes.

6 Q How was your job -- well, first of all,
7 let me ask you this: Was your job with
8 Environmental Support Solutions identical to your
9 job at Tyler Technologies?

10 A No.

11 Q Was it very different than your job at
12 Tyler Technologies?

13 A Subject wise, absolutely 100 percent
14 different. As far as telephone trainings, a lot
15 more of those there than here; completely --
16 almost in reverse proportion. So it was quite a
17 bit different.

18 Q And when you were working at Tyler
19 Technologies, how much input did your program
20 manager have on your day-to-day activities? I
21 mean, did they schedule your trips?

22 A The program manager, no. Again, we had
23 one person, Phyllis Lynn, where I worked, that
24 would give the tasking. And that would be based
25 on the contract, obviously; the sequence of the